

Federal Maritime Commission

§ 587.2

United States against specific individuals or entities.

§ 587.1 Purpose; general provisions.

(a)(1) It is the purpose of this part to enumerate certain conditions resulting from the action of a common carrier, acting alone or in concert with any person, or a foreign government, which unduly impair the access of a vessel documented under the laws of the United States whether liner, bulk, tramp or other vessel, (hereinafter *U.S. flag vessel*) to ocean trade between foreign ports, which includes intermodal movements, and to establish procedures by which the owner or operator of a U.S. flag vessel hereinafter *U.S. flag carrier*) may petition the Federal Maritime Commission for relief under the authority of section 13(b)(5) of the Shipping Act of 1984 (*the Act*) (46 U.S.C. app. 1712(b)(5)).

(2) It is the further purpose of this part to indicate the general circumstances under which the authority granted to the Commission under section 13(b)(5) may be invoked, and the nature of the subsequent actions contemplated by the Commission.

(3) This part also furthers the goals of the Act with respect to encouraging the development of an economically sound and efficient U.S. flag liner fleet as stated in section 2 of the Act (46 U.S.C. app. 1701).

(b)(1) This part implements the statutory notice and hearing requirement and ensures that due process is afforded to all affected parties. At the same time, it allows for flexibility in structuring proceedings so that the Commission may act expeditiously whenever harm to a U.S. flag carrier resulting from impaired access to cross trades has been demonstrated or is imminent.

(2) The provisions of part 502 of this chapter (Rules of Practice and Procedure) shall not apply to this part except for those provisions governing *ex parte* contacts (§502.11 of this chapter) and service of documents and copies of documents (§§502.114(b) and 502.118 of this chapter, and except as the Commission may otherwise determine by order.

(c) The condition of unduly impaired access will be found only where a U.S.

flag carrier is commercially able to enter a trade in which its access is being unduly impaired, or is reasonably expected to be impaired, or where actual participation in a trade by a U.S. flag carrier is being restricted for reasons other than its commercial ability or competitiveness.

(d) In examining conditions in a trade between foreign ports, and in considering appropriate action, the Commission will give due regard to U.S. maritime policy and U.S. Government shipping arrangements with other nations, as well as the degree of reciprocal access afforded in U.S. foreign trades to the carriers of the countries against whom Commission action is contemplated.

[49 FR 45406, Nov. 15, 1984, as amended at 55 FR 28400, July 11, 1990]

§ 587.2 Factors indicating conditions unduly impairing access.

For the purpose of this part, factors which would indicate the existence of conditions created by foreign government action or action of a common carrier acting alone or in concert with any person, which unduly impair access of a U.S. flag vessel engaged in or seeking access to ocean trade between foreign ports, include, but are not limited to:

(a) Imposition upon U.S. flag vessels or upon shippers or consignees using such vessels, of fees, charges, requirements, or restrictions different from those imposed on national-flag or other vessels, or which preclude or tend to preclude U.S. flag vessels from competing in the trade on the same basis as any other vessel.

(b) Reservation of a substantial portion of the total cargo in the trade to national-flag or other vessels which results in failure to provide reasonable competitive access to cargoes by U.S. flag vessels.

(c) Use of predatory practices, possibly including but not limited to closed conferences employing fighting ships or deferred rebates, which unduly impair access of a U.S. flag vessel to the trade.

(d) Any government or commercial practice that results in, or may result in, unequal and unfair opportunity for